

Water Policy Technical Advisory Committee
Minutes of Meeting of October 15, 2003
9:00 a.m. to 4:00 p.m.

Attendance:

Water Policy Technical Advisory Committee Members:

Bob Burnley, DEQ	Jerry Higgins,
Tom Gray for Robert Taylor, VDH	Blacksburg, Christiansburg, VPI Water
Tom Botkins, VMA	Authority
Mike Thacker, AEP	Jeffery Irving, U.S. Army Corps of
Shelton Miles, CPR	Engineers
Frank Sanders, City of Winchester	Josh Rubinstein, VA. Rural Water
Judy K. Dunscomb, The Nature	Association
Conservancy	Ed Imhoff
Terry Reid, VAWWA	Charlie Crowder, Fairfax County Water
Cathy Taylor, Dominion	Authority
Mike West, HBAV	William Stoneman, VA. Farm Bureau
Craig Ziesemer for Brian Ramaley, Newport	William E. Cox, Virginia Tech
News Water Works	Ward Staubitz, USGS
Eldon James, RRBC	David Paylor, Deputy SNR
Patti Jackson, James River Association	Art Petrini, Henrico County
Sam Hamilton, VA. Agribusiness Council	Robert Royall, VA. Water Well Association
David Kovacs for Jesse Richardson, VAPA	

Members Absent:

Christopher Miller, Piedmont Environmental	Dan Kavanaugh, VAPDC
Council	Guy Aydlett, VAMWA
Robert Conner, Brunswick County	

DEQ and Facilitation staff:

Terry Wagner	Barbara Hulburt
Scott Kudlas	Mark Rubin
Joe Hassell	Bill Ellis
Kathy Frahm	Chris French
Ellen Gilinsky	

Interested Parties:

John Kauffman, DGIF	Denise Thompson, VML
John Carlock, VAPDC alternate	Clayton Walton, Williams Mullen
Becky Mitchell, City of Virginia Beach	Brent Waters, Golder Associates
Eileen Leininger, Newport News	Paul Jacobs, Christian & Barton
Chuck Duvall, Smurfit Stone	Ray Jackson, WWAC
Robin Seabrook, City of Richmond	Shannon Varner, Troutman Sanders
Greg Prelewicz, FCWA	
Larry Land, VACO	

Summary of the Meeting:

The meeting began with the usual introductions and review of meeting summaries. A request was made for clarification of a position taken in the September 29th summary. The summary from September 11th was approved.

Barbara indicated a concern that many TAC members are not discussing their real concerns, fears, and without doing so there is not a real discussion and she encouraged the TAC members to negotiate with each other and that the facilitators would be willing to assist as necessary.

Mark reviewed for the TAC what happened at the State Water Commission (SWC) meeting held on September 30th. He tried very hard to present what he told the TAC he would say. He summarized the important comments and feedback of the SWC. Some TAC members indicated that the SWC seemed concerned with issues that were on the periphery of TAC discussions.

Deputy Secretary Paylor outlined a proposal of five state commitments for completing this work to the TAC. They included:

- 1) commitment to an ongoing state planning process
- 2) presentation of a framework for the state water resources plan
- 3) commitment to the development of an annual work plan
- 4) commitment to a process to obtain input from stakeholders and interested parties
- 5) Commitment to annual reporting on progress.

Comments made by TAC members that were reflected on flip chart notes included:

- Annual input process with product available at end of each year (VDH has a stake as well)
- Significant state role in water resources: making sure in-stream uses protected
- Some pieces of responsibility (i.e. protection of resources) will fall more heavily on state than localities
- Local and regional plans are also flexible
- Some areas of the state may already have known, specific needs that would be taken into consideration in setting priorities for state plan process

- Critical to avoid perception that local plans are set in stone (“Certification”)
- Have to be able to make adjustments
- On-going process does not mean there are not stable, known portions (policies, projects, etc.)
- Finality and stability where possible; priority setting
- State plan larger than one agency; DEQ lead – others involved
- Help from state agencies early in process; what criteria will be required by state permitting
- How will effort improve utilities’ efforts in getting to approved project
- Williams’ bill – “one-stop shopping”
- Data needs:
 - Coordination
 - More data
- What analysis will be used by state in weighing options?
- Leg/Reps re: state plan?
 - Coordination of agencies, etc.
- Memoranda of Agreement with other agencies

Specific recommendations for changes to the organization or language used in the first draft state plan outline included:

Section II: Role of State

- Facilitation
- Add “water resource protection”
 - Water quality and conservation matters
- “Approval” role – “acceptance” ?
- Inter-state role

- Coordination with other state agencies; information/data
- Development of data
- Assessment of demand reduction

Section III: Information

- Here's what we know; here are expectations of local / regional plans
- Water quality & Quantity links recognized.
 - Known info noted
- Role for VDH
- Analysis of data: take this responsibility out of the hands of competing regulatory agencies (Use federal partners? Universities?)

Section IV:

- Incorporation of local and regional plans
 - How analyzed, etc.
- Other competing off-stream uses
- Protection of ground water use, surface water use, and property rights

Ongoing issues:

- Priority-setting on critical areas, even if not designated SWMA
- "Wise use" – broader than industry recognition
- Good faith effort by DEQ to get some response from agency that hasn't responded
 - Executive Order?
 - Way to deal with non-responsiveness, lack of resources (make this part of report?)

- Agency should be required to respond (legislation required?)
- Agency should be required to give info re: what locality needs to do with environmental issues (legislation required?)

After a short break, the TAC moved to discussion of the draft regulation. Comments made and changes suggested by TAC members that were reflected in the flip chart notes included:

Part III. “Certification”

- Section 130. General-Enactment Clause
 - Determine that it's consistent with regs
 - Approval/certification (pages 3 & 9) – language needs to be consistent
 - Incorporation
- Section 140.
 - A.: Add “the holding of a public mtg plan”...780-160.d
 - Constraints on other state agencies (response times: 30 days? 45? 60?)
 - Review (go to necessary people/agencies/localities for input)
 - 6 months? - More than 30 days before Board hearing
 - Then goes into Board process
 - Locality should be responsible for soliciting comments from responsible agencies during planning process
 - B.3: “though” not “and”
 - Add: B.4: consistency with 62.1-44:36 (principles and policies)

Section 150

- Add language re: public hearing if requested

- B.1: need criteria for Board to use re:resolution of conflicts (not just “extent”)
- Identification of conflicts, but possibly not resolution at this point
- Add:
 - #1: adequate and safe...
 - #2: beneficial uses
 - #3: conflicts
 - #4: compliance with regulations
 - #5: compliance with state plan

D. Incorporation:

- First in time = First in right?
- May not happen until everyone goes through certification
- Completes the certification process
- Need to flesh out the benefits to the localities/regions of incorporation

E. Amendments:

- 180.50.B: “revisions”
- For consistency and substance

Section 160.

- Notice by web ok?
 - List-serve
- Notice to affected localities
- Plans will identify their own affected localities as they do assessment, analysis, etc.

- Notify all local governments by e-mail?
- What about authorities?
- Lists by river basin (what the Corps does)
- Need to make explicit the implication that public hearings be required (60)

C. Separate comment period/public meeting request

- When does request get granted?
- Public meeting v. Public hearing

D. Contents of Notice

- How do citizens get plan?
- Require copy in library
- DEQ Website

Section 170 Public Meeting

- Notice on Website

Section 180-Resolution of Conflicts

- Make mediation voluntary?
- “Incompatibilities”-for purposes of state plan
- “Should” rather than “Shall”
- “May”, “Encourage”
- Unspecified process= “ADR”
- Resolve at permit stage

- Board refers for mediation?
- Section 25-15-150- Voluntary
- No “advocacy” without resolution
- Strike 180- Board denies incorporation if unresolved
- Mediation may not produce resolution
- Current vs. Future Incompatibilities
- Requires wider range of alternatives
- Partial approval

The TAC was asked to review Senator Williams proposed bill and to be prepared at the next meeting to provide a position or comment.

The TAC was told that the next meeting would be held November 4th at a different location and a later starting time.